

BEVERLY TRULL

IBLA 76-482

Decided June 10, 1976

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim null and void CA 3095.

Set aside and remanded.

1. Mining Claims: Lands Subject to--Mining Claims: Power Site Lands--Mining Claims: Withdrawn Lands-- Withdrawals and Reservations: Power Sites

A mining claim located before August 11, 1955, on land within an existing power site withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

2. Administrative Procedure: Hearings--Mining Claims: Hearings--Rules of Practice: Hearings

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

3. Rules of Practice: Generally

Where it appears that the Bureau of Land Management determined the status of land

without considering the effect of conflicting surveys and maps, and where there is insufficient data in the case file for this Board to resolve the conflicts the decision will be remanded to the Bureau for reconsideration in light of those conflicts.

APPEARANCES: Beverly Trull, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Beverly Trull appeals from the December 29, 1975, decision of the California State Office, Bureau of Land Management (BLM), declaring the Grapevine Placer Mining Claim null and void. The BLM took the action at the request of the Forest Service based on a determination that the claim was located on land withdrawn from entry at the time of the location, November 24, 1954, by reason of an order of the Federal Power Commission, dated May 11, 1925, withdrawing the land for Power Project No. 608.

Appellant asserts that the claim was resuscitated by the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970). Appellant also suggests that notice and an opportunity for a hearing should be given, pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1970), before a claim is declared invalid. Finally, appellant questions whether the land the claim is located on is actually withdrawn, as a resurvey was done after the withdrawal of the land and caused substantial changes in the boundaries.

[1] The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970), opened certain lands within power site withdrawals to mineral entry. It did not resuscitate claims which had been located on withdrawn lands prior to the date of the Act, August 11, 1955. Michey G. Shaulis, 11 IBLA 116, 118 (1973); Gardner C. McFarland, 8 IBLA 56 (1972); Day Mines, Inc., 65 I.D. 145 (1958).

[2] In a proceeding in this Department to determine the validity of a mining claim, an evidentiary hearing is required only if there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given to facts of record which show the status of the land when the claim was located, no hearing is required. Foster Mining and Engineering Co., 7 IBLA 299, 79 I.D. 599 (1972); The Dredge Corp., 65 I.D. 336, 338-39 (1958), aff'd Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966).

[3] However, we note that there appears to be considerable discrepancy between the map submitted by the Forest Service and the master title plat showing the withdrawal. The sections in the Forest Service map are asymmetrical, while those on the plat map are not. The Forest Service map also depicts the mining claim as entirely within section 20, though the description of the claim in the location notice states that the claim is within sections 20 and 21. <sup>1/</sup> Moreover, there is no indication in the case file that the BLM was aware of any conflicting surveys, nor is there any evidence of conflicting surveys. As there is not enough information in the case file for this Board to review the decision below, with respect to the actual situs of the claim, the case will be remanded to the California State Office, BLM, in order that that office may consider the conflicts among the surveys, maps and description of the mining claim and the need for field examination to determine the situs of the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for action consistent with the opinions expressed herein.

Edward W. Stuebing

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Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Douglas L. Henriques  
Administrative Judge

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<sup>1/</sup> Section 21 is depicted as outside the boundary of the National forest. The description of the claim given in the location notice is, as the Forest Service notes, "completely impossible." Moreover, as the BLM states in its decision, no township or range is given, only section numbers.

